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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/520,947	03/08/2000	Norman Paul Formo	FPM1114707	1127

26389 7590 06/19/2002

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EXAMINER

MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/19/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/520,947

Applicant(s)

FORMO, NORMAN PAUL

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Continuation Sheet*.

Continuation of Attachment(s) 6). Other: Corrected PT0-892 from Paper No. 6.

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**DETAILED ACTION**

The Amendment filed April 3, 2002 has been entered. Claims 1-24 have been cancelled. Claims 25-35 have been added and are pending in the application. With respect to the Williams and McEachen references, the PTO-892 from Paper No.6 has been corrected to identify the references as Derwent Abstracts (copy included). The PTO-892, for this office action cites the provided NZ patent publications.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

pre  
6/17/02  
36 1 3 1  
Claims 25 and 26<sub>4</sub> are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A).

Morris teaches a method of enclosing a loaf of bread in an inner package with a weakening opening means (i.e. a row of perforations as recited in claim 26) for enabling access to the loaf by a consumer, inserting the inner package (weakening opening means end last) into an outer bag having an open end configured for re-opening by a consumer and a closed not configured for opening, closing the outer bag such that the weakening opening means end is presented to the consumer upon reopening the open end of the outer bag, without providing the weakening opening means in the closed end

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of the outer bag (i.e. with multiple rows of perforations or a single) (Figures, Abstract, Column 1, line 70 to Column 2, line 34, Column 3, lines 3-45). However, Morris teaches the inner package is a wax paper wrapper wherein the loaf is placed on the wrapper and sealed therein (Column 3, lines 3-15), and is silent in teaching the inner package is a preformed bag with an opened first end and a closed second end having a weakening opening means, heat shrinking the packaged bread, inserting the weakening bag opening means end last into the outer bag without exposing the first end of the inner preformed bag at the reopened end of the outer bag.

McEachen teaches enclosing bread in a package that provides the same feature as inner package of Morris (i.e. bread slice accessibility from an otherwise sealed package). However, McEachen is relied on as evidence of the conventionality of enclosing a loaf of bread in a bag with a closed end having a weakening means (i.e. perforations) and an open end for filling, wherein the weakening means allow the consumer to access the bread after the package has been sealed (Specification Pages 2-3, Page 4, paragraph 5).

Therefore, it would have been obvious to modify the method of Morris to include the steps of *inserting* the loaf of bread into the bag of McEachen since one would have been substituting one method of enclosing a loaf of bread with a weakening means for another for the same purpose: providing accessibility to loaf of bread in a sealed package. It would have been further obvious that the bag of McEachen would be inserted into the outer bag such that the first end would not be exposed at the reopened

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end of the outer bag, since Morris teaches the weakening means end must be at the reopened end of the bag.

Although Morris teaches *sealing* the inner package to preserve the bread, Morris is silent in teaching heat shrinking. However, it was well known in the art that heat shrinking an inner package containing a loaf of bread, especially when the inner package is a bag, will provide sealing sufficient to preserve bread. Theed is relied on as evidence of the conventionality of heat shrinking an inner bag of a double bag bread package to preserve the bread, which is one of the purposes of the inner package of Morris. (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12). Therefore it would have been further obvious to include the step of heat shrinking the inner package, since would have been substituting one sealing step for another for the same purpose: sealing bread in an inner package contained within an outer bag to maintain bread freshness.

Regarding claims 30 and 31, although Morris is silent in performing the method automatically, it would have been obvious to provided automatic loaf feeding, bagging, transferring, and inserting steps since broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art. In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958).

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Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A), as applied to claims 25,26,30 and 31 above, further in view of Collins et al. (US 5741075).

Morris teaches a row of perforation that is horizontal with respect to the top of the loaf (Figures, Column3, lines 15-30), but is silent in teaching a perforation line horizontal to the ends of the bread. However, Collins is relied on as evidence of the conventionality teaches horizontal perforations to access bread from a package (e.g. item 7 in Figure 2, Column 2, lines 40-55). Therefore it would have been obvious to further include either a perforation line horizontal with respect to the ends of the bread since one would have been substituting one perforation location for another for the same purpose: accessing a loaf of bread from an end of sealed package via a row of perforations.

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A), further in view of Collins et al. (US 5741075), as applied to claim 27 above, further in view of Blum (US 2132144).

As discussed above in the rejection of claim 27, it was known to provide a horizontal row of perforations at the end of a sealed bread package for enabling access to the bread, but Morris is silent in teaching scoring. Blum is relied on as evidence of the conventionality of using either a score line or perforations as a line of weakness to gain access to a wrapped loaf of bread (Figure 1, Column1, lines 1-44). Therefore, it

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would have been obvious to modify Morris and provide a score as the weakening means since it was known that either perforations or scoring may be used to gain access to packaged bread and one would have been substituting one method for manual opening a package for the same purpose: access a wrapped loaf of bread.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A), as applied to claims 25,26,30,and 31above, further in view of Blum (US 2132144).

Regarding claim 28, Morris teaches the inner package has perforations as a weakening means to gain access to a loaf of bread, but is silent in teaching scoring.

Blum is relied on as evidence of the conventionality of using either a score line or perforations as a line of weakness to gain access to a wrapped loaf of bread (Figure 1, Column1, lines 1-44).

Therefore, it would have been obvious to modify Morris and provide a score as the weakening means since it was known that either perforations or scoring may be used to gain access to packaged bread and one would have been substituting one method for manual opening a package for the same purpose: access a wrapped loaf of bread.

Claims 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A).



Regarding claims 32 and 34, Morris teaches a packaged product comprising a loaf of bread snugly enclosed in an inner package (of waxed paper) within an outer bag having an openable and non-openable or closed end. Morris teaches the inner package comprises a weakening means (i.e. perforations as recited in claim 34) at one end of the inner package, for manual opening the inner package by the consumer, that is adjacent the openable end of the outer bag and a gathered, previously open end (i.e. closed by end flaps) at the end of the inner package adjacent remote from the openable end of the outer bag. Morris teaches the inner package outer bag systems helps to keep the bread fresh (Figures, Abstract, Column 1, line 70 to Column 2, line 34, Column 3, lines 3-45). However, Morris is silent in teaching the inner package is a heat-shrunk bag that is inserted perforated end last into the outer bag.

McEachen teaches enclosing bread in a package that provides the same feature as inner package of Morris (i.e. bread slice accessibility). However, McEachen is relied on as evidence of the conventionality of enclosing the bread in a *bag* with a closed end having a weakening means (i.e. perforations) and an open end for filling, wherein the weakening means allow the consumer to access the bread after the open end has been closed (Specification Pages 2-3, Page 4, paragraph 5).

Therefore it would have been obvious to substitute the inner wax paper wrapper of Morris with a *bag* having a closed end with a weakening means and an open end for filling since McEachen teaches the bag offers the same function as the wax paper wrappers: accessibility of slices. One would have been substituting one known bread

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package design for another for the same purpose: accessibility of bread slices in a sealed bread package.

Although Morris teaches *sealing* the inner package to preserve the bread, Morris is silent in teaching heat shrinking. However, it was well known in the art that heat shrinking an inner package containing a loaf of bread, especially when the inner package is a bag, will provide sealing sufficient to preserve bread. Theed is relied on as evidence of the conventionality of heat shrinking an inner bag in a double bag bread package to preserve the bread, which is one of the purposes of the inner package of Morris. (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12). Therefore it would have been obvious to further heat shrink the inner package, since one would have been substituting one type of seal another for the same purpose: sealing an inner package in a outer bag to provide snugly wrap to maintain bread freshness.

Regarding claim 33, although Morris teaches the inner package is sealed with flaps, Morris is silent in teaching gussets per se. However, McEachen et al. are relied on as evidence of providing a gusseted pre-formed closed end of the inner bag (Specification Page 2, paragraph 8). Therefore, it would have been obvious to provide a gusseted closed end since one would have been substituting one known end seal for another for the same purpose: provide an package end with a weakening means for accessing bread slices.

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Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morris (US 3428240) in view of McEachen (NZ 2436745) and Theed (GB 2331059 A), as applied to claims 32-34 above, further in view of Blum (US 2132144).

Regarding claim 35, Morris teaches the inner package has perforations as a weakening means to gain access to a loaf of bread, but is silent in teaching scoring.

Blum is relied on as evidence of the conventionality of using either a score line or perforations as a line of weakness to gain access to a wrapped loaf of bread (Figure 1, Column1, lines 1-44).

Therefore, it would have been obvious to modify Morris and provide a score as the weakening means since it was known that either perforations or scoring may be used to gain access to packaged bread and one would have been substituting one weakening means another for the same purpose: access a wrapped loaf of bread.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Williams (NZ 270385 A) teaches a double bag bread package.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

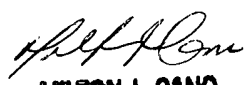
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
June 17, 2002

  
**MILTON I. CANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**